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OFFICE OF PETITIONS

In re Application of
Phillip Edwards, Bradley Levin,
Michael O'Toole, Joseph Vandenberg,
and Lee Xu
Application No. 10/034,792
Filed: December 27, 2001
Title: TRANSCEIVER FOR LC CONNECTOR:

DECISION ACCORDING STATUS
UNDER 37 C.F.R. § 1.47(a)

This is a decision on the facsimile transmission filed December 18, 2002, and supplemented by a petition for an extension of time filed January 8, 2003. This communication is being treated as a request for reconsideration of petition under § 1.47 to accept a declaration without the signatures of joint inventors Bradley Levin and Joseph Vandenberg. This communication is considered in light of the additional paper filed by facsimile transmission on January 28, 2003, per the request of the undersigned.

The petition under 37 CFR 1.47(a) is **GRANTED**.

The above-identified application was filed on December 27, 2001, without an executed oath or declaration. In reply to a "Notice to File Missing Parts of Nonprovisional Application," mailed February 7, 2002, applicants filed the initial petition asserting that status under § 1.47 was proper because inventors Levin and Vandenberg refused to and/or were unavailable to execute the declaration and power of attorney documents. The petition was dismissed for failure to provide adequate proof of the unavailability of the non-signing inventors¹. (Decision mailed October 8, 2002). This decision set a two-month period for reply, with extensions of time obtainable under § 1.136(a).

On instant renewed petition, petitioner submitted copies of the cover letters of transmittal showing that a copy of the application papers (specification, including claims, drawings, and oath or declaration) were forwarded to both inventors (Levin and Vandenberg) by Federal Express Standard Overnight delivery. Given the dates of mailing, these papers were received by the

¹ A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or found, after diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

inventors on or about December 14, 2002. As of the filing of the instant petition, four days later, inventor Vandenberg had executed a declaration and that declaration is submitted on instant renewed petition. Accordingly, as to inventor Vandenberg, the petition is moot.

As to non-signing inventor Levin, the petition filed December 18, 2002, does not indicate an express refusal. Given the short period since receipt of the paper, it was premature as of December 18, 2002, to conclude that his failure to respond constituted a refusal. However, on January 28, 2003, the petition was supplemented with a declaration by Denise S. Grisack, a person with firsthand knowledge of the relevant facts. Ms. Grisack declares that to date no response has been received from inventor Levin and in addition, he has not responded to two subsequent telephone messages regarding this matter. Given this additional evidence, it is concluded that petitioner has shown that inventor Levin has refused to join in the application after having been presented with the application papers.

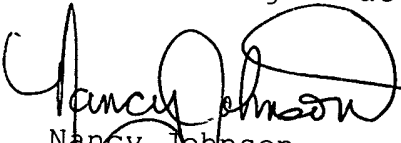
The declaration and the petition have been reviewed and found in compliance with 37 C.F.R. § 1.47(a).

This application is hereby accorded Rule 1.47(a) status.

As provided in new Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

The application file is being returned to the Office of Initial Patent Examination for completion of pre-examination processing.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0309.


Nancy Johnson
Petitions Attorney
Office of Petitions